

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Section 68.4 of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible)	
Telephones)	
)	
Petition for Waiver of)	
Section 20.19(c)(2)(i)(A) of the)	
Commission's Rules)	

**Petition for Limited Waiver
of Section 20.19(c)(2)(i)(A) of the Commission's Rules**

Advantage Cellular Systems, Incorporated ("Advantage"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby requests a limited and temporary waiver of Section 20.19(c)(2)(i)(A) of the Commission's rules.² Advantage is fully committed to ensuring access to digital wireless services by individuals with hearing loss. However, because GSM hearing aid compatible ("HAC") handsets that meet a U3 rating in operation in both the 850 MHz and 1900 MHz bands under the new ANSI C63.19 standard are not commercially available in sufficient quantity to allow Advantage to obtain them prior to August 1, 2006,³ Advantage is compelled to seek a waiver of the FCC's requirement that Advantage offer in the GSM portion of its network at least two handsets meeting a U3 or higher interference rating and Advantage respectfully requests

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. §§ 20.19(c)(2)(i)(A).

³ With manufacturers scrambling to get handsets certified as HAC compliant during these last hours leading up to the August 1, 2006 deadline, Advantage recognizes that additional GSM handsets may be certified as HAC compliant prior to the August 1, 2006 deadline. However, as of July 18, 2006, Advantage could not confirm the availability of any 850/1900 MHz GSM handsets that had been certified as HAC compliant.

a three month extension of the August 1, 2006 deadline.⁴ However, to the extent that GSM U3 rated handsets that are compliant in operation in both the 850 and 1900 MHz bands become commercially available to Advantage, Advantage will offer at least two GSM handsets models that meet a U3 or higher interference rating in both bands as soon as possible. In addition, during the waiver period Advantage will continue to meet or exceed the conditions set forth in the *GSM Relief Order*, including offering two or more GSM handsets that are HAC compliant in operation in the 1900 MHz band. Grant of the instant waiver request is consistent with the public interest as outlined below.

I. Advantage Is Unable to Meet the FCC's August 1, 2006 HAC GSM Handset Deadline Due to Factors Outside of Its Control

In the *Hearing Aid Compatibility Report and Order*,⁵ the Commission required that digital wireless phones be capable of operating effectively with hearing aids based on certain performance measurement standards contained in the 2001 version of ANSI C63.19, "*American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001*."⁶ As the Commission is well aware, manufacturers have had great difficulty in manufacturing GSM wireless handsets that meet the Commission's HAC requirements in operation in the 850 MHz band. Therefore, in the *GSM Relief Order*, the Commission ruled that it would accept until August 1, 2006 the HAC compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.⁷ Thereafter, in a

⁴ In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Memorandum Opinion and Order*, WT Docket No. 01-309 (September 7, 2005) ("*GSM Relief Order*").

⁵ Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility, *Report and Order*, WT Docket No. 01-309, 18 FCC Rcd 16753 (2003); *erratum*, 18 FCC Rcd 18047 (2003).

⁶ *See id.* at 16776-79 ¶¶ 55-64.

⁷ Advantage availed itself of the relief offered in the *GSM Relief Order*.

Public Notice released June 6, 2006, the FCC announced that it would allow the use of the 2006 version of ANSI C63.19 - Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids to assist manufacturers and carriers in providing handset models that comply with the hearing aid compatibility requirements.⁸ However, even utilizing this less stringent standard, as of July 18, 2006 Advantage is not aware of any handsets that have been certified as HAC compliant in operation in both the 850 MHz and 1900 MHz bands and that are being offered for sale by manufacturers. Even if such handsets were recently certified, Advantage would not be able to obtain these handsets in sufficient time to test the handsets on its network and make them available for sale. Accordingly, and as discussed below, Advantage requires a waiver of the Commission's Section 20.19(c)(2)(i)(A) HAC benchmark and an extension of the relief offered in the *GSM Relief Order*.

Advantage has worked and will continue to work diligently with handset manufacturers and distributors to try and obtain handsets that meet the Commission's technical standards set forth in Section 20.19(b) of its rules. In fact, Advantage currently offers two or more GSM HAC Compliant handsets that are compliant with the conditions placed on the relief offered by the FCC's *GSM Relief Order*. As Advantage reported in each of its HAC Reports, Advantage has inquired with handset manufacturers regarding the availability of GSM HAC compliant handsets.⁹ Most recently, in discussions with Motorola, Inc. and Samsung Electronics Co., Ltd, Advantage was advised that they intend to offer for sale two GSM 850/1900 MHz handsets that are compliant under the new ANSI standard by the August 1, 2006 deadline, but neither manufacturer knew exactly when, or if, the FCC's Office of Engineering & Technology ("OET") would grant

⁸ Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard, Public Notice, DA 06-1215 (June 6, 2006).

⁹ Advantage has contacted the following handset manufacturers concerning HAC-compliant handset availability: LG, Motorola, Nokia, Samsung and Sony Ericson.

certification. In addition, Sony Ericsson Mobile Communications, Inc. indicated that it would only offer GSM HAC handsets that are compliant at 1900 MHz. Most of the handset manufacturers Advantage has spoken with will not even identify those handset models that they are testing for GSM HAC compliance in operation in both the 850 and 1900 MHz bands.¹⁰ As discussed in more detail below, manufacturer delay in identifying HAC compliant handsets, the anticipated distributor-associated delays in delivery of HAC compliant handsets, when and if they become available, and the need for Advantage to test HAC compliant handsets on its network, will prevent Advantage from meeting its August 1, 2006 HAC deadline.

As detailed in Advantage's HAC Reports on file in this docket, Advantage has worked diligently since the Commission announced the modification to the exemption for wireless phones in 2003 to ensure that it would meet the Commission's HAC benchmarks. Advantage has not only worked with handset distributors, but has also made repeated contact with handset manufacturers to try and determine when GSM wireless handsets would be available that meet all of the Commission's benchmarks. However, despite these efforts, Advantage is merely a purchaser and not a manufacturer of wireless handsets and therefore has little to no ability to affect the availability of HAC handsets from manufacturers.

¹⁰ Handset manufacturers have mostly been unresponsive to requests for information regarding HAC handsets and a timeline for certification because, unlike Tier I carriers, small carriers like Advantage do not have a direct relationship with these manufacturers. Most have told Advantage to reference Hearing Aid Compatibility Report #5, which was filed by the Alliance for Telecommunications Industry Solutions ("ATIS") on May 17, 2006 in WT Docket 01-309. However, the information contained in the report is outdated and provides no certification information regarding 850/1900 GSM HAC handsets tested under the new ANSI standard. Advantage has attempted to access certifications of manufacturers' handsets on the OET's website, but has found it overly burdensome and difficult to obtain confirmation of HAC certification by sifting through the thousands of TCB reports to try to find references to HAC certification.

Even Cingular Wireless, the nation's largest wireless carrier, has previously acknowledged that it "has only the ability to indirectly affect the availability of HAC phones from vendors."¹¹ Likewise, T-Mobile, the other GSM nationwide carrier, has stated that it takes an additional 60 days to obtain, test and deploy HAC compliant GSM handsets.¹² As a small carrier with considerably less market clout than nationwide carriers like Cingular Wireless and T-Mobile, Advantage is given low priority by wireless handset vendors in fulfilling wireless handset orders.¹³ As a result, Advantage will not be able to even begin its own GSM network testing until after the Tier I carriers' GSM HAC compliant handset orders are filled.

The lack of certifications of GSM HAC compliant handsets at this late date indicates that manufacturers may not obtain certification until right at or even after the August 1, 2006 deadline. This conclusion is consistent with information that Advantage has obtained from handset manufacturers, handset distributors and the OET website. Although the Commission has allowed the use of the 2006 version of ANSI C63.19, manufacturers still need to identify handsets that they believe will achieve a U3 rating in operation in both the 850 MHz and 1900 MHz bands, obtain certification from the TCB and obtain final authorization from the OET. Even if additional manufacturers were to immediately indicate which of their handsets are certified and approved as HAC compliant, Advantage at this late date would not have sufficient time to meet the August 1, 2006 deadline except in the unlikely event that Advantage has two such handsets in its current inventory. Since Advantage does not have the market power to purchase handsets directly from

¹¹ Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket 01-309 (filed August 5, 2005) ("*Cingular Petition*").

¹² T-Mobile USA, Inc. Petition for Waiver, WT Docket No. 01-309, (filed August 26, 2005) ("*T-Mobile Petition*"). See also Reply of T-Mobile USA, Inc., WT-Docket No. 01-309 (filed September 8, 2005).

¹³ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶¶ 17-21 (2002).

the handset manufacturer, even after identifying which handsets are HAC compliant, Advantage will need to check with handset distributors to see when those distributors will be able to obtain the particular handset in sufficient quantity to supply Advantage. With the demand for HAC compliant handsets and Tier I carriers competing for wireless handsets to meet their FCC benchmark of four GSM HAC compliant handsets, Advantage does not know how long it will be before handsets will be available for it to purchase from its handset distributor. Based on previous experience obtaining wireless handsets from its handset distributor, Advantage estimates that it will take approximately two months from the time it is able to identify certified GSM 850/1900 HAC compliant handsets to obtain the handsets from its distributor. In addition, Advantage is unsure whether manufacturers will be able to obtain certification prior to the August 1, 2006 deadline and therefore Advantage may not be able to identify HAC compliant GSM certified handsets until mid-August. Finally, assuming manufacturers make GSM HAC compliant handsets available on or shortly after August 1, 2006, even after Advantage is able to obtain these handsets from its distributor, Advantage will still need to test the handset to ensure that the handset works on Advantage's network – a process that can take one to two weeks – prior to making the HAC handsets available for sale. Accordingly, Advantage is requesting a three month waiver of Section 20.19(c)(2)(i)(A) of the Commission's rules.

II. Advantage Satisfies the Relevant Standards for Waiver of the Commission's Rules

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.¹⁴ The Commission has previously recognized that waiver grant is in the public interest where, as here, compliance with a particular regulation is dependent on the

¹⁴ 47 C.F.R. § 1.3.

availability of equipment from manufacturers.¹⁵ In the FCC's *Fourth Memorandum Opinion and Order* ("E911 Fourth MO&O"), the Commission recognized that there would be instances when "technology-related issues" or "exceptional circumstances" would cause a delay in a wireless carrier's ability to meet a FCC benchmark. Such recognition is consistent with the Commission's acknowledgement that "bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps."¹⁶ Manufacturers, although racing to meet the FCC's mandate, are just now overcoming the technological complexities of limiting interference at 850 MHz in order to make HAC handsets available for carriers to meet the FCC's deadlines. Even under the new ANSI standard, most manufacturers will either miss the Commission's August 1, 2006 deadline or will identify which GSM handsets are HAC compliant in operation in both the 850 and 1900 MHz bands so close to the deadline as to render it impossible for Advantage to obtain and test on its network the newly HAC certified handsets prior to the deadline. Therefore, the requested waiver is consistent with the Commission's recognition that compliance deadlines should be linked to the availability of manufacturer equipment.¹⁷

Section 1.925(b)(3) of the Commission's rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

¹⁵ See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000) ("E911 Fourth MO&O"); *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase II*, 13 FCC Rcd 9564 (1998); *Policies and Rules Concerning Operator Service Providers*, 5 FCC Rcd 4630 (1990).

¹⁶ GARMIN International, Inc., *Order on Reconsideration*, DA 01-851 at ¶ 5.

¹⁷ See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸

Under both of these standards, grant of the requested waiver is warranted. Application of the Section 20.19(c)(2)(i)(A) handset deadline to Advantage would be inequitable in light of the lack of availability of GSM 850/1900 MHz HAC compliant handsets, a factor outside of Advantage control. The unavailability of such handsets leaves Advantage with no reasonable alternative but to seek a waiver.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's HAC benchmarks set forth in Section 20.19. In setting a August 1, 2006 deadline for both manufacturers and carriers, the FCC anticipated that an additional eleven months would be sufficient time for the adoption of a new ANSI standard, for manufacturers to research, manufacture and test HAC compliant handsets and for carriers to obtain those handsets. However, because of the late adoption of the new ANSI standard, manufacturers had little time to perform TCB testing and obtain OET certification prior to the August 1, 2006 deadline. As a result, and as discussed herein, it is now clear that sufficient quantities of GSM HAC compliant handsets required to meet the August 1, 2006 deadline will not be made available to Advantage in time to allow Advantage to meet this deadline. A temporary limited waiver of Section 20.19(c)(2)(i)(A) is entirely consistent with the underlying purpose of the establishment of the August 1, 2006 deadline.

III. Conclusion

¹⁸ 47 C.F.R. § 1.925(b)(3).

Advantage requests a temporary limited waiver of Section 20.19(c)(2)(i)(A) and a three month extension of the August 1, 2006 deadline offered to wireless carriers in the *GSM Relief Order*. Advantage's timetable for compliance is based on its experiences and contacts with manufacturers and distributors and publicly available information regarding handset availability. Based upon its own inquiries, Advantage can not determine when manufacturers will make available in sufficient quantity GSM HAC handsets that are compliant in operation in both the 850 and 1900 MHz bands to Tier I carriers, who always get first priority. However, assuming that manufacturers make HAC compliant handsets available to Tier I carriers on or shortly after August 1, 2006 and factoring in the two month timeframe it typically takes Advantage to obtain the handsets from its distributor and an additional two weeks for testing, Advantage does not expect to be capable of selling and activating such handsets prior to November 2006. While Advantage hopes to begin selling and activating HAC compliant handsets prior to November 2006, Advantage has no firm basis to believe that it will have sufficient quantities of the necessary handsets prior to this time. Accordingly, Advantage requests that the deadline for Advantage to include in its handset offerings at least two HAC compliant GSM handsets be extended to November 1, 2006.

Although Advantage has had little to no interest in the purchase of wireless handsets by hearing impaired individuals, Advantage has undertaken to educate the public regarding HAC and will continue to do so. Throughout the waiver period Advantage will continue to work with hearing impaired individuals to ensure a means of utilizing its handsets. Moreover, Advantage will continue to make available for sale at least two GSM handsets that are HAC compliant when operating at 1900 MHz. Finally, Advantage will continue to comply with the conditions stipulated in the Commission's *GSM Relief Order*, including providing live, in-store consumer

testing, offering a flexible return policy and educating the public on the hearing aid compatibility of specific GSM digital wireless handsets.

Based on the foregoing, Advantage respectfully requests that the Commission grant Advantage a temporary waiver of Section 20.19(c)(2)(i)(A) of its rules as set forth herein.

Respectfully submitted,

Advantage Cellular Systems, Incorporated

By: _____/s/_____

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Dated: July 25, 2006

DECLARATION OF RICKY GIBBS

I, Ricky Gibbs, do hereby declare under penalty of perjury the following:

1. I am the Manager of Advantage Cellular Systems, Incorporated..
2. I have read the foregoing "Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and accurate.



Ricky Gibbs7-24-06
Date